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Living Wills and Health Care Powers of Attorney

To many people, the fear of a lingering death is worse than the fear of dying. Yet often near the end of one's life, one is unable to make decisions or express desires concerning medical care to loved ones or medical personnel. A living will and a health care power of attorney are legal documents which will permit you to make certain choices regarding your future health care and will allow you to appoint another individual to make those decisions for you in the event that you are unable to make them for yourself.

NOTE: A Living Will, also known as a Medical Declaration, makes no provision for your personal belongings or property after your death. A Living Will should not be confused with a Testamentary Will. If you have additional questions about making a Living Will or Health Care Power of Attorney, discuss them with a physician or attorney.

This pamphlet was prepared as a public service by the Communications Committee and is not intended to be a comprehensive statement of the law. North Carolina laws change frequently and could affect the information in this pamphlet. If you have specific questions with regard to any matters contained in this pamphlet, you are encouraged to consult an attorney. If you need an attorney please contact the North Carolina Lawyer Referral Service, a nonprofit public service project of the North Carolina Bar Association, toll free: 1-800-662-7660. (Wake County residents call: 677-8574.)

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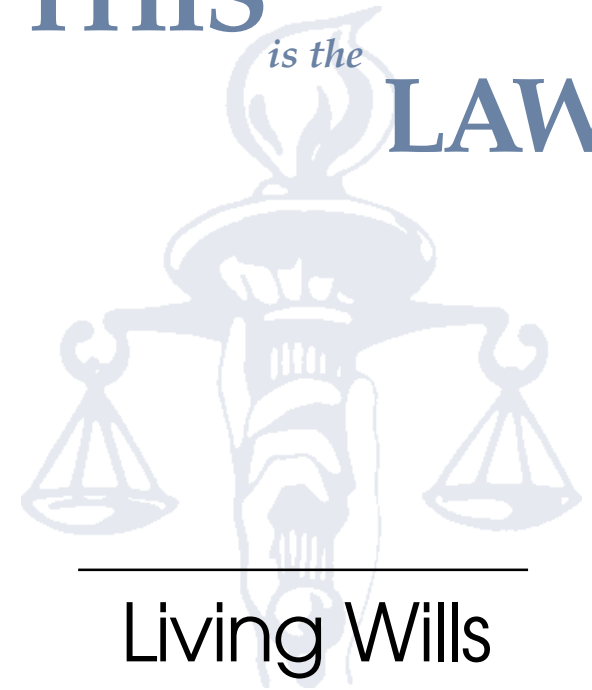
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What is a Living Will?

A living will is a document which allows you to retain control over whether your life will be prolonged by certain medical procedures if you are diagnosed as being terminally and incurably ill or in a persistent vegetative state (*i.e.*, a sustained complete loss of self-awareness). In North Carolina, this is called “A Declaration of A Desire for a Natural Death.” A living will allows you to authorize the withholding of extraordinary means of keeping you alive (for example, respirator care) and may authorize the withholding or discontinuance of artificial nutrition or hydration. You may make different choices as to the level of care to be withheld or discontinued depending upon whether your medical condition is terminal and incurable or you are in a persistent vegetative state.

What is a Health Care Power of Attorney?

A health care power of attorney is a document by which you may appoint another person who may consent to or refuse medical care, including mental health treatment, on your behalf if a physician or eligible psychologist determines that you are unable to make or communicate these decisions yourself. You may authorize the designated person (the “health care agent”) to consent to the withholding or withdrawal of life-sustaining procedures in the event you are determined to be: (1) terminally ill, (2) permanently in a coma, (3) suffering from severe dementia, or (4) in a persistent vegetative state.

Life-sustaining procedures are those which only serve to artificially prolong the dying process and may include mechanical ventilation, dialysis, antibiotics, artificial nutrition and hydration, and any other medical treatment (other than care to provide comfort or alleviate pain). In addition to making decisions in “life and death” situations, your health care agent also may be authorized to make more routine medical decisions for you (for example, to consent to X-rays or surgery). You may include instructions to your health care agent to refuse any specific types of treatment that are unacceptable to you for religious or other reasons. In the event of death, you may authorize your health care agent to donate your organs and authorize an autopsy.

A health care power of attorney will not be effective if a court appoints a guardian to act on your behalf. How-

ever, you may indicate in the document your choice of a guardian in the event guardianship proceedings are commenced.

How Should a Living Will or Health Care Power of Attorney Be Made?

The forms used to make a living will or health care power of attorney may be obtained from an attorney. A health care power of attorney may be a separate document or may be included in a broader durable power of attorney document addressing matters other than consent for and refusal of medical care.

A living will and a health care power of attorney must be witnessed and signed in accordance with North Carolina law and must be certified by a notary public. At least two witnesses are required for a living will and a health care power of attorney. Witnesses cannot be related to the person signing the documents or be potential heirs to the person’s estate. No attending physician or employee of the physician or health care institution may be witnesses for these documents; however, such an employee may notarize the document. Volunteers are not employees of the physician or health care institution, so they may witness the execution of a living will or health care power of attorney. Witnesses can have no claim against the individual.

You should carefully consider the implications of executing these documents, both as to the course of your future medical care and as to the effect of your decisions on your loved ones.

It is strongly suggested that you consult with family members prior to executing these documents.

Can I Have Both a Living Will and a Health Care Power of Attorney?

Yes. You may have a living will indicating your choice of health care in the event you are unable to make those decisions in the future, and you also may have a health care power of attorney designating an individual to act on your behalf. In fact, you may even have a living will and a health care power of attorney in the same document. By addressing these issues in a single document, the risk of any inconsistency in separate documents can be avoided. If you are in a condition not covered by your living will, then the health care power of attorney will govern. In the event of a conflict between the wishes expressed in your living will and a decision made by your health care agent, your living will governs.

Can I Change My Mind Once I Sign a Living Will or Appoint a Health Care Agent?

Yes. You may revoke a living will at any time that you are able to communicate health care decisions. You may revoke a health care power of attorney if you are also capable of making health care decisions. You may do so by executing and acknowledging an instrument of revocation, executing a subsequent living will or health care power of attorney, or by any other manner by which you are able to communicate your intent to revoke. The revocation will become effective only upon communication to the attending physician and to each health care agent named if a health care power of attorney is to be revoked. These documents should be reviewed periodically, especially in the event of divorce, or death or disability of a named agent, to ensure that they continue to reflect your desires about health care decisions.

If I Do Not Have a Living Will or Health Care Power of Attorney, Who Will Make These Decisions for Me?

If you do not have a living will or health care power of attorney, your physician will ask your spouse or next of kin to consent to treatment, unless a court has appointed a guardian. North Carolina statutes provide that the decision to withdraw or withhold medical care if you are terminally and incurably ill, or in a persistent vegetative state, may be made by your physician, after consulting with your spouse or next of kin and after your condition is confirmed by another physician.

Where Should I Keep My Living Will or Health Care Power of Attorney Document?

It is suggested that you give a copy of these documents to your family physician, attorney and family members. For a fee of \$10, you may also file a copy of these documents with the Advance Health Care Directive Registry maintained by the Secretary of State.

A signed copy of a health care power of attorney document can also be given to your health care agent and any alternate named in your health care power of attorney. A safety deposit box or locked safe is not recommended for storage of these documents.